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NOT TO BE PUBLISHED

COURT OF APPEAL, FOURTH DISTRICT

DIVISION TWO

STATE OF CALIFORNIA

THE PEOPLE, Plaintiff and Respondent, v. GARY DUTCH HOLLAND, Defendant and Appellant.	E029577 (Super.Ct.No. RIF096091) **OPINION**

APPEAL from the Superior Court of Riverside County. James A. Cox, Judge. Affirmed as modified.

Susan Cardine, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Gary W. Schons, Senior Assistant Attorney General, and Gary W. Brozio, Supervising Deputy Attorney General, for Plaintiff and Respondent.

Defendant pleaded guilty to one count of child endangerment (Pen. Code, § 273a, subd. (a)[1]); in exchange, he was granted probation for a period of four years on various

[1] All future statutory references are to the Penal Code unless otherwise stated.

terms and conditions and ordered to serve 180 days in county jail on weekends. On appeal, defendant contends (1) the search term set forth in the order is unreasonable and broader than that agreed upon, and (2) the administrative fee is improper as well as excessive. We agree with the parties that the administrative fee should be reduced from $30 to $20 but reject defendant's remaining contention.

I

DISCUSSION[2]

A. *Search Condition*

During the sentencing proceedings, the prosecutor stated, "Your Honor, we do need to add one more thing — I think we forgot to check it — search terms so CPS could enter the home when they needed to check on the welfare of the children." The trial court inquired, "That would be search terms for evidence of child endangerment?" The prosecutor and defense counsel both answered in the affirmative, and defendant indicated he understood the condition. That same day, defendant and his counsel, as well as the prosecutor and court, signed the "PROBATION TERMS" document, which included the requirement that defendant "[s]ubmit to search of [his] person, automobile, residence, garage, storage areas, personal or leased property with or without reasonable cause by any law enforcement or probation officer for detection of child endangerment."

Defendant argues the above search term is broad and not reasonably related to the offense. He also asserts that the final order does not reflect the search term set forth by

the court and agreed to by him. He therefore urges this court to amend or strike the search condition. We disagree.

Defendant signed the "PROBATION TERMS" document, which states "I have read, and understand and accept these terms/conditions of probation." Further, there is no discrepancy between the judgment as orally pronounced and as entered in the minute order, as defendant claims. The prosecutor stated that she forgot to check the search-terms condition in the "PROBATION TERMS" document, and the court merely inquired if that "would be search terms for evidence of child endangerment?" The court did not specifically set the search terms at that time. It appears that the parties and the court were referring to the "PROBATION TERMS" document when they were speaking of the search terms. Thus, the final order does reflect the search terms set forth by the prosecutor and court and agreed to by defendant.

Moreover, the search terms, including search of defendant's person, are reasonably related to the offense and to future criminality. (*People v. Lent* (1975) 15 Cal.3d 481, 486.) In granting probation, courts have broad discretion under section 1203.1 to impose terms and conditions for the rehabilitation of the defendant and protection of public safety. (§ 1203.1; *People v. Carbajal* (1995) 10 Cal.4th 1114, 1121 [goal of section 1203.1 is to rehabilitate the defendant]; *People v. Bauer* (1989) 211 Cal.App.3d 937, 940.) A condition will not be held invalid unless it has no relationship to the crime of which the defendant is

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[footnote continued from previous page]

2 The record fails to disclose the factual background of defendant's crime; and the police report, which the parties stipulated could be used to determine the factual basis of the plea, is absent from the record.

convicted, relates to conduct which is not itself criminal, and requires or forbids conduct which is not reasonably related to future criminality. (*Lent*, *supra*, at p. 486.) All three factors must be present for a condition of probation to be invalid. (*People v. Wardlow* (1991) 227 Cal.App.3d 360, 366.)

Defendant's concern that the search condition is overly broad and serves no legitimate purpose is not well founded. (See, e.g., *People v. Adams* (1990) 224 Cal.App.3d 705, 712 ["a warrantless search condition is intended and does enable a probation officer '"to ascertain whether [the defendant] is complying with the terms of probation; to determine not only whether [the defendant] disobeys the law, but also whether he obeys the law. Information obtained . . . would afford a valuable measure of the effectiveness of the supervision given the defendant and his amenability to rehabilitation"'"]; *In re Anthony S.* (1992) 4 Cal.App.4th 1000, 1006 ["[w]ith the benefit of probation comes the burden of a 'consent search term.' Such a term serves as a correctional tool . . . "]; *In re York* (1995) 9 Cal.4th 1133, 1150 ["[w]hen [warrantless search and seizure] conditions are imposed upon a probationer . . . it is established that the individual 'consents to the waiver of his Fourth Amendment rights in exchange for the opportunity to avoid service of a state prison term. Probation is not a right, but a privilege'"].) The search term relates to defendant's crime to which he pleaded guilty and is reasonably related to defendant's future criminality. This term also serves a rehabilitative purpose. Thus, the trial court did not abuse its discretion in imposing the challenged search term.

B. *Administrative Fee*

Defendant next contends the trial court lacked jurisdiction to assess an administrative fee because the Riverside County Board of Supervisors has not exercised its statutory right to impose an administrative fee for the restitution fine. He also asserts if the Board of Supervisors exercises its discretion to impose the collection fee for the restitution fine, the appropriate amount is $20, not $30. The People respond defendant is mistaken regarding the court's jurisdiction to assess an administrative fee but concede the amount should be reduced. We are inclined to agree with the People.

The County of Riverside has elected to assess such a fine; thus, the court has jurisdiction. In addition, the parties are correct that the amount should be 10 percent of $200 (the restitution amount ordered in this case) pursuant to section 1202.4, subdivision (*l*). The administrative fee should therefore be reduced from $30 to $20.

II

DISPOSITION

The trial court is directed to amend the abstract of judgment so as to reflect an administrative fee in the amount of $20 and to forward a certified copy of the amended abstract of judgment to the Department of Corrections. (§§ 1213, 1216.) In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED

RICHLI

J.

We concur:

McKINSTER

Acting P.J.

GAUT

J.